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EXAMINER

ZIRKER, DANIEL R

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1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/531,978
Filing Date: March 20, 2000
Appellant(s): SUN ET AL.

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GROUP 1700

Armand P. Boisselle
For Appellant

EXAMINER'S ANSWER

This Answer hereby vacates the Examiner's Answer mailed May 11, 2005.

The Examiner notes for the record that this Examiner's Answer is in response to the Board of Patent Appeals and Interferences remand of the previous Examiner's Answer, and replaces the prior Answer. It is noted, however, that the substance of this Answer is virtually identical to the previous Answer, with the only change being that claims 70-75 are acknowledged as not being pending and rejected, as was not previously the case. It is also pointed out that an English Translation of JP Kokai 59/49971 was

supplied by applicants to the PTO on August 10, 1997 and duly acknowledged by the Examiner, although since it is apparently no longer in the electronic file wrapper it is now again being scanned into the file wrapper.

(1) ***Real Party in Interest***

A statement identifying the real party in interest is contained in the Brief.

(2) ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the Brief.

(3) ***Status of Claims***

The statement of the status of the claims contained in the Brief is correct.

(4) ***Status of Amendments After Final***

The appellants' statement of the status of amendments after final rejection contained in the Brief is correct.

(5) ***Summary of Invention***

The summary of invention contained in the Brief is correct.

(6) ***GROUND OF REJECTION TO BE REVIEWED ON APPEAL***

The appellants' statement of the issues in the Brief is correct.

(7) ***Claims Appealed***

The copy of the appealed claims contained in the Appendix to the Brief is correct.

(8) ***Prior Art of Record***

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal. A copy is supplied in the attached Appendix.

JP Kokai 59-49971 Toray Industries (Translation) March 22, 1984

(9) ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 56-59, 61-81 and 83-87 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Japanese Patent Kokai No. 59-49971 Translation. Note particularly the claim set forth on page 1, page 3 line 1 - page 5 line 20, particularly page 5 lines 5-8, pages 6-7 bridging paragraph, page 8 second complete paragraph - page 9 line 18, the Example. The reference discloses what appears to be a broad genus of appellants' claimed biaxially oriented multilayer adhesive coated films wherein an imitation paper polyolefin film which comprises a polyolefin film layer 1 containing a suitable amount of filler is laminated to an oriented polyolefin film 2. Additionally, the two layer composite biaxially oriented film set forth above can be provided in certain embodiments with a suitable adhesive layer (pages 6 and 7 bridging paragraph) on either outer surface. With respect to the composition of each of the first and second layers, both polypropylene, polyethylene and ethylene-propylene resins may be utilized, and both layers may contain a wide variety of additives such as nucleating agents and the like, although it is noted that layer 2 does not contain "fillers". Both polyolefin films 1 and 2 are believed to inherently possess in at least certain embodiments a layers which fulfills the required polyethylene density parameter, as no higher density composition such as e.g. HDPE or

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the like is utilized to form either layer 1 or 2. Additionally, both layers are believed to inherently possess the required base layer polyethylene density parameter, as well as the skin layer Young's modulus parameter (i.e. the "tensile modulus") and both film layers 1 and 2 are disclosed (e.g., page 3 lines 14-15, page 4 lines 20-21, the Example on page 14) as being biaxially oriented lengthwise and widthwise to the requirement of different stretch parameters before being thermoset. As such, the resulting adhesive film, having been treated with an anisotropic effect, would inherently have the resulting tensile modulus in one direction, i.e. the machine direction, different than the tensile modulus in the cross-direction, with the Examiner believing that what direction constitutes lengthwise or widthwise is inherent in, e.g. a square film which may be labeled lengthwise or widthwise however appellants desire to do so; i.e. it is a semantic, not a structural distinction. The Examiner believes that the above analysis of the reference disclosure clearly encompasses independent claim 56 upon which the great majority of appellants' dependent claims are dependent, while with respect to claim 83 which further contains parameters regarding the dimensions of the biaxially orienting that the multilayer film is processed with are believed to be, if not either expressly or inherently disclosed, obvious design optimizations to one of ordinary skill in the artificial paper and label art. It is noted that with respect to biaxial orientation this well known parameter increases the strength of the film and also makes the film heat shrinkable and optically clearer than in its unstretched state, thus satisfying the issues regarding the motivation for modifying in an obvious manner. Finally, it is noted that for claim 85, this claim requires the stretch orientation of the multilayer film in the machine direction

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to be greater than the stretch orientation in the cross-direction by at least 10%, with the tensile modulus in the cross-direction remaining at 150,000 psi or less as for the last parameter has been the case with the prior claims as well. The Examiner, however repeats his contention that modifying the stretch orientation is, if not inherent, also an obvious modification to one of ordinary skill, in the absence of unexpected results for the reasons previously set forth above. Finally, with respect to certain of the additional parameters found in the dependent claims such as the specific stretching ratios, frictional energies, thicknesses and haze parameters, these are each believed to be, if not either expressly or inherently disclosed, obvious design optimization parameters to one of ordinary skill in the artificial paper and label art.

Claims 60 and 82 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP -971 Translation, substantially for reasons set forth in the previous paragraph, together with the following additional observations. With respect to claim 60, the Examiner believes that the absence of fillers from base film layer 1 of the reference is believed to be a parameter well within the ordinary skill of the art. With respect to claim 82, the Examiner notes that the presence of a product-by-process limitation requiring a "simultaneous" biaxially orientation is, although not taught by the reference, believed to be well within the ordinary skill of the art in the absence of unexpected results not heretofore shown on the record.

(10) ***Response to Argument***

The Examiner would further like to briefly note both the Example and also the Comparative Example 2 in JP -971, and how the results of the only example in the

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reference provide the Young's modulus data for the entire co-extruded film in both the machine and cross-machine directions. The Example in JP -971 discloses an 82 micron base layer of polypropylene resin containing a calcium carbonate filler and an 8 micron skin layer of an ethylene-propylene block copolymer resin. The film was biaxially oriented by a stretch ratio of 3.5 in the machine direction and a stretch ratio of 9 in the cross-direction. Additionally, Comparative Example 2 in JP -971 discloses an extruded 90 micron film of the same base layer material which has been biaxially oriented with the same stretch ratios. The Comparative Example discloses Young's modulus measurements of 93 kg/mm² in the machine direction and 150 kg/mm² in the cross-machine direction. As can be seen, these parameters differ from one another by a significant amount.

According to appellants' remarks, the Examiner contests appellants' reasoning set forth on page 8 of the Brief by first disagreeing that the "Young's modulus parameters are totally different from the modulus parameters specified in the present claims". However, the Examiner merely notes that the film materials are made from the same polyolefin materials as appellants utilize, and are processed in the same or similar manner, which can only lead to the contention that what differences which may exist, are minor at most and obvious optimization parameters to one of ordinary skill. Additionally, the Examiner contests appellants' contention on page 8 that the reference neither teaches nor suggests label stocks comprising biaxially oriented multilayer films wherein the tensile modulus of the multilayer films in the machine direction is greater than the tensile modulus in the cross-direction. The reference makes out a clear case

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that the tensile modulus of this anisotropic treated film exhibits greater properties in one direction, call it either the machine or cross-direction, than the other direction, call it either the machine or cross-direction, which is all the Examiner is required to do.

Additionally, with respect to appellants' contention that the reference neither teaches nor suggests multilayer films wherein the tensile modulus in the cross-direction is 150,000 psi or less, the Examiner can only again disagree, noting that since the materials are made from the same ingredients and processed in essentially the same manner, the Examiner has made more than a prima facie case that this parameter is clearly met. In summary, appellants are not seen to have rebutted the prima facie case of record.

20. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Daniel Zirker
Primary Examiner
Art Unit 1771



Conferees:

Terrel Morris



CAROL CHANEY
SUPERVISORY PATENT EXAMINER

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Application/Control Number: 09/531,978

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April 20, 2006

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